

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION

ESMERALDA GARCIA  
Plaintiff,

v.

WAL-MART STORES TEXAS, L.L.C.

Defendant,

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CIVIL ACTION NO. \_\_\_\_\_

JURY DEMAND

**NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. §§ 1332 and 1441**  
**(DIVERSITY)**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW WAL-MART STORES TEXAS, LLC, (hereinafter “Defendant”) in the above entitled and numbered cause, and files this Notice of Removal of the present cause from the 139<sup>th</sup> District Court of Hidalgo County, Texas, in which it is now pending, to the United States District Court for the Southern District of Texas, McAllen Division, showing the Court in support as follows:

1. This lawsuit was commenced in the 139<sup>th</sup> District Court of Hidalgo County, Texas, on December 16, 2020, when Plaintiff’s Original Petition was filed in Cause No. C-24309-20-C wherein Plaintiff named WAL-MART STORES TEXAS, LLC as the sole Defendant. A copy of Plaintiff’s Original Petition is attached hereto as **Exhibit “A”** and incorporated herein for all purposes.

2. Defendant was served with a copy of Plaintiff’s Original Petition on December 29, 2020. A copy of the Citation indicating date of service is attached hereto as **Exhibit “B”** and incorporated herein for all purposes.

3. Plaintiff filed this civil action against Defendant asserting premises liability claims allegedly arising from a slip-and-fall incident which is claimed to have occurred on or about September 27, 2020, while Plaintiff was a patron at Defendant's premises located in Edinburg, Hidalgo County, Texas. *See Exhibit "A"*, p. 2 at ¶ 7.

4. Defendant filed a responsive pleading in Hidalgo County State Court on January 19, 2021, a copy of which is attached hereto as **Exhibit "C"** and incorporated herein for all purposes.

5. Plaintiff resides in Edinburg, Hidalgo County, in the State of Texas. *See Exhibit "A"*, p. 1 at ¶3. Plaintiff was at the time of the filing of this lawsuit, and remains, a citizen of the State of Texas.

6. Currently, and at all times relevant to this lawsuit, Defendant is organized and existing under the laws of the State of Arkansas with its principal place of business in the State of Arkansas. Therefore, Defendant is a citizen of Arkansas, and is not a citizen of Texas.

7. Complete diversity of citizenship exists between the adverse parties in this lawsuit for the purposes of federal removal jurisdiction pursuant to 28 U.S.C. §1441.

8. In Plaintiff's Original Petition, Plaintiff states that she seeks compensatory damages for past and future medical expenses, past and future physical pain and mental anguish, past and future physical impairment, past and future physical disfigurement, lost wages in the past and loss of earning capacity in the future . *See Exhibit "A"*, p. 3 at ¶9. Furthermore, Plaintiff states in her Original Petition that she is seeking monetary relief in an amount greater than \$200,000.00, but less than \$1,00,000.00. *Id.*

9. This lawsuit is one over which this Court has original jurisdiction under the provisions of Title 28, United States Code §§ 1332 and 1441(a) in that it is a civil action between completely diverse parties and that amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

10. This Notice of Removal is timely filed in accordance with 28 U.S.C. §1446(b), in that it is filed within thirty (30) days of the service of Plaintiff's Original Petition on Defendant and within one year of the initial filing of the lawsuit.

10. Upon filing of this Notice of Removal of this cause, written notice of the filing by Defendant to Plaintiff has been provided as required by law. A copy of this Notice is also being filed with the Clerk of the State Court in which this cause was originally filed.

11. Defendant hereby requests a trial by jury, which has previously been requested in State Court.

WHEREFORE, PREMISES CONSIDERED, Defendant prays for Removal of the above entitled and numbered cause from the 139<sup>th</sup> Judicial District of Hidalgo County, Texas to this Honorable Court.

Respectfully submitted,

COLVIN, SAENZ, RODRIGUEZ & KENNAMER LLP

By: /s/ Jaime A. Saenz

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**ATTORNEYS FOR DEFENDANT**

**WAL-MART STORES TEXAS, LLC**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 20<sup>th</sup> day of January 2021 I electronically filed the foregoing with the Clerk of Court for the District Court of Hidalgo County, Texas using the CM/ECF system for the Clerk of Court for the District Court of Hidalgo County, Texas which will send notification of such filing to all counsel of record.

/s/ Jaime A. Saenz

Jaime A. Saenz